

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 11, 2009

RICHARD MADKINS v. STATE OF TENNESSEE

**Appeal from the Tennessee Claims Commission
No. T20090525 Stephanie Reever, Commissioner**

No. M2009-01580-COA-R3-CV - Filed January 21, 2010

Inmate filed an action against the State of Tennessee seeking money damages for his allegedly erroneous incarceration on multiple offenses. In a previous habeas corpus action, it was determined that the criminal court erred in making some of the sentences concurrent, and the relevant criminal indictments were ultimately nolle prossed. In the present case, the Claims Commission granted the State's motion to dismiss for failure to state a claim upon which relief can be granted. We affirm the decision of the Claims Commission.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Tennessee Claims
Commission Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Richard Madkins, Henning, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Martha A. Campbell, Associate Deputy Attorney General; and Stephanie A. Bergmeyer, Assistant Attorney General; for the appellee, State of Tennessee.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Richard Madkins, an inmate in the custody of the Tennessee Department of Correction, brought this action against the State of Tennessee for negligent care, custody, and control pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(E).

Mr. Madkins was arrested on July 29, 1984, and charged with assault with intent to commit robbery, case #8404503 (“Case A”); he was released on bond. On August 14, 1984, Mr. Madkins was arrested for robbery with a deadly weapon, cases #8404938-39 (“B Cases”); after these charges were dismissed at the preliminary hearing, Mr. Madkins was again released on bond with respect to Case A. Mr. Madkins was arrested yet again for robbery on October 14, 1984, cases #8500678 through 8500681 (“C Cases”). The grand jury subsequently indicted Mr. Madkins in all of these cases.

In April 1985, a jury convicted Mr. Madkins of assault with intent to commit robbery and aggravated assault in Case A. He was sentenced to 18 years. The prosecutor then entered into a plea bargain with Mr. Madkins providing that he would plead guilty to five felonies in the B and C Cases and that his sentences would run concurrently with the sentence in Case A. In May 1985, Mr. Madkins was sentenced in the B and C Cases to 21 years to run concurrently with the 18-year sentence in Case A.

Although the record does not indicate the exact length of Mr. Madkins’s actual incarceration, he must have been released from prison prior to September 1993 because he was subsequently charged and convicted of two felonies based on a robbery that took place on September 27, 1993. In 1994, Mr. Madkins was convicted of especially aggravated robbery and attempted felony murder and sentenced to 60 years. On appeal, however, the Supreme Court reversed the conviction for attempted felony murder because no such offense existed under Tennessee law. *See State v. Madkins*, 989 S.W.2d 697, 699 (Tenn. 1999). On remand, the sentence was reduced to 25 years.

In January 2002, Mr. Madkins filed a writ of habeas corpus arguing that the concurrent sentences he received in 1985 were illegal under Tenn. Code Ann. § 40-20-111(b).¹ In April 2002, a criminal court judge ruled that the concurrent sentences in the B and C cases were void. The conviction and sentence in Case A remained valid. *See Madkins v. State*, No. M2005-02873-CCA-R3-HC, 2007 WL 595711, at *1-2 (Tenn. Crim. App. Feb. 26, 2007) (another habeas corpus action regarding Mr. Madkins’s 1994 conviction). The criminal court remanded the indictments in the B and C Cases back to the trial court. The trial court dismissed the indictments, but the Court of Criminal Appeals held that dismissal of the indictments was improper and remanded to allow Mr. Madkins to withdraw his guilty pleas and proceed to trial or keep the pleas intact and be resentenced. *State v. Madkins*, No.

¹Tenn. Code Ann. § 40-20-111(b) provides that, “[i]n any case in which a defendant commits a felony while the defendant was released on bail in accordance with the provisions of chapter 11, part 1 of this title, and the defendant is convicted of both offenses, the trial judge shall not have discretion as to whether the sentences shall run concurrently or cumulatively, but shall order that the sentences be served cumulatively.”

W2003-02938-CCA-R3-CD, 2005 WL 22950, at *2 (Tenn. Crim. App. Jan. 5, 2005). On remand, Mr. Madkins withdrew his guilty pleas; the indictments were nolle prossed in July and November 2007.

Mr. Madkins filed the current claim for damages in the Division of Claims Administration on November 3, 2008, asserting negligent care, custody, and control of persons under Tenn. Code Ann. § 9-8-307(a)(1)(E). The case was transferred to the Claims Commission. On March 3, 2009, the State filed a motion to dismiss for lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted. The motion more specifically asserted that Mr. Madkins's claims were barred by the statute of limitations, res judicata, and judicial and prosecutorial immunity. The Claims Commission granted the State's motion in an order filed on April 6, 2009. The Claims Commission order includes the following conclusions:

Contrary to claimant's assertions, there is no indication that claimant has been held beyond his lawful sentences or that the Commission has authority to render money damages against the State for his continued incarceration. Further, these claims, which have been presented before, are barred by the doctrines of res judicata and judicial immunity.

Mr. Madkins submitted a motion to strike the State's motion to dismiss, but the motion to strike was not filed with the Claims Commission until April 3, 2009, the day of the hearing on the motion to dismiss. On May 8, 2009, after the Claims Commission had granted the State's motion to dismiss, Mr. Madkins filed a motion to alter or amend the judgment on the grounds that the Claims Commission had failed to consider his motion to strike and had failed to make the required findings of fact and conclusions of law. On June 19, 2009, the Claims Commission entered an order denying Mr. Madkins's motion to alter or amend. The Claims Commission stated that Mr. Madkins's motion to strike was not timely filed and went on to conclude that the motion "presented no argument that would merit denial of the motion to dismiss or reconsideration of the Order of Dismissal." The Claims Commission also stated that the order of dismissal properly identified the factual and legal basis for its decision.

In this appeal, Mr. Madkins raises two issues: (1) whether the Claims Commission erred in granting the State's motion to dismiss without considering his motion to strike, and (2) whether the Claims Commission erred in granting the State's motion to dismiss because the State's motion failed to comply with Tenn. R. Civ. P. 7.02(1).

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim pursuant to Tenn. R. Civ. P. 12.02(6) tests the legal sufficiency of the complaint. *Edwards v. Allen*, 216 S.W.3d 278, 284 (Tenn. 2007). In reviewing the trial court's action on such a motion, this court must take the factual allegations of the complaint as true. *Willis v. Tenn. Dep't of Corr.*, 113 S.W.3d 706, 710 (Tenn. 2003). Our review of the trial court's legal conclusions concerning the complaint's adequacy is de novo with no presumption of correctness. *Edwards*, 216 S.W.3d at 284. This court will "uphold granting the motion only when it appears that the plaintiff can prove no set of facts in support of a claim that will entitle him or her to relief." *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003).

ANALYSIS

Mr. Madkins argues that the Claims Commission erred in granting the State's motion to dismiss because it failed to consider his motion to strike. We need not address Mr. Madkins's assertions concerning whether and why his motion to strike was filed late because the Claims Commission, in ruling on Mr. Madkins's motion to alter or amend its order of dismissal, expressly concluded that, "having reviewed the claimant's motion to strike, the Commission finds that it presented no argument that would merit denial of the motion to dismiss or reconsideration of the Order of Dismissal." Thus, the Claims Commission did consider Mr. Madkins's motion and found it to be without merit.

Pursuant to Tenn. R. Civ. P. 12.06, "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." The decision to grant or deny a motion to strike is within the trial court's discretion and therefore will be overturned on appeal only where there has been an abuse of discretion. *Pelts v. Int'l Med. Servs. Corp.*, No. W2002-00388-COA-R3-CV, 2003 WL 22071462, at *8 (Tenn. Ct. App. Aug. 28, 2003) (citing *Doe v. Mama Taori's Premium Pizza, LLC*, No. M1998-00992-COA-R9-CV, 2001 WL 327906, at *3 (Tenn. Ct. App. Apr. 5, 2001)). We accord great deference to matters within the discretion of the trial court (or claims commission). *Ali v. Fisher*, 145 S.W.3d 557, 564 (Tenn. 2004). In his motion to strike, Mr. Madkins basically argued the merits of the grounds raised by the State to support its motion to dismiss for failure to state a claim. As will be discussed more fully below, we agree with the Claims Commission's conclusion that the State's motion to dismiss was well taken. We find no abuse of discretion in the commission's determination that the motion to strike was without merit.

Mr. Madkins also argues that the State's motion to dismiss was erroneously granted by the Claims Commission because the motion did not comply with Tenn. R. Civ. P. 7.02(1),

which provides that motions “shall state with particularity the grounds therefor.” As Mr. Madkins notes, Rule 7.02(1) requires a motion to dismiss pursuant to Tenn. R. Civ. P. 12.02(6) to state “why the plaintiff has failed to state a claim for which relief can be granted.” *Willis*, 113 S.W.3d at 709 n.2. We find nothing in the record to indicate that Mr. Madkins raised this issue before the Claims Commission. In any event, we find that the State’s motion to dismiss complied with Rule 7.02(1). In its motion, the State specifically asserted that Mr. Madkins’s claim was barred by the statute of limitations, res judicata, and judicial and prosecutorial immunity.

In his brief, Mr. Madkins also discusses the merits of the Claims Commission’s granting of the State’s motion to dismiss for failure to state a claim. On appeal, the State relies on two main grounds to support the Claims Commission’s action: failure to state a claim for negligence and judicial immunity. We consider the first ground to be a sufficient basis to support the Claims Commission’s decision and, therefore, need not address the second ground.

Mr. Madkins couched his petition in terms of negligent care, custody, and control of persons pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(E). The following statements from his brief summarize the crux of Mr. Madkins’s claim:

[T]he negligent action of the State forced claimant to serve the illegal 21 years sentences in state custody until these sentences had expired. And after the illegal sentences had expired the State continues to harass claimant by forcing him to be held in state custody for four (4) more years under these void indictment[s] in case No. 8404938-39, 85678-81.

The validity of Mr. Madkins’s argument that his claim for erroneous incarceration under illegal sentences falls within the parameters of Tenn. Code Ann. § 9-8-307(a)(1)(E) is questionable in the eyes of this court. However, even under the assumption that Mr. Madkins could properly bring such a claim against the State, the facts in this case do not support any claim for negligent care, custody, or control by the State.

Pursuant to Tenn. Code Ann. § 9-8-307(c), the State’s liability for negligence must be based upon traditional common law tort concepts. Under the facts of this case, there is no evidence of a breach of duty or of injury because there is no evidence that the State kept Mr. Madkins in custody for an excessive period. As the Claims Commission concluded, “there is no indication that claimant has been held beyond his lawful sentences.” The B and C Cases were determined to be problematic because the court improperly made the sentences concurrent with Mr. Madkins’s sentence in Case A. The original 18-year sentence in Case A, however, remained valid and is not disputed by Mr. Madkins in this case. Thus, during

the period of time in which Mr. Madkins was serving time on concurrent sentences that were later determined to be invalid, he was also serving time on Case A, for which the sentence was valid. Moreover, Mr. Madkins's 1994 conviction and sentence of 25 years are not in question. All of the time during which Mr. Madkins has been in state custody was justified by valid convictions and sentences. The Claims Commission properly dismissed Mr. Madkins's petition against the State for failure to state a claim upon which relief could be granted.

CONCLUSION

The decision of the Claims Commission is affirmed. Costs of appeal are assessed against the appellant, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE